

**CHAPTER 75-03-16**  
**LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES**

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**75-03-16-01. Definitions.** As used in this chapter:

1. "Department" means the North Dakota department of human services.
2. "Facility" means a residential child care facility or group home.

3. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:
  - a. Involve physical and psychological challenges;
  - b. Are designed to:
    - (1) Stimulate competence and personal growth;
    - (2) Expand individual capabilities;
    - (3) Develop self-confidence and insight; or
    - (4) Improve interpersonal skills and relationships; and
  - c. Take place in a setting of twenty-four-hour participant supervision.
4. "Participant" means a child participating in an out-based program.
5. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under staff supervision.
6. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

**History:** Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-02. Effect of license.**

1. A facility license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only on the premises and for the number of children indicated on the license.
2. For a facility not licensed to provide foster care services on July 31, 1998, a licensed facility that changes its programming philosophy or ownership, or a provisionally licensed facility upon issuance of an unrestricted license:
  - a. The initial period of licensure is one year;
  - b. The license may be renewed for a second one-year period if the facility successfully completes a program review and certifies compliance with all other licensing rules and requirements;

- c. The license may be renewed for a third one-year period if the facility successfully completes a licensing study; and
  - d. Thereafter, the facility or home may be eligible for a two-year license.
- 3. The department may, in its sole discretion, issue a license without inspecting a facility's buildings, grounds, and equipment, if the department finds that:
  - a. The facility was inspected and complied with the provisions of this chapter and of North Dakota Century Code chapter 50-11 regarding buildings, grounds, and equipment in the preceding year; and
  - b. The facility is otherwise eligible to receive a license.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-01, 50-11-02

#### **75-03-16-02.1. Application for license.**

- 1. An application for a facility license must be submitted to the department. Application must be made in the form and manner prescribed by the department. The department may require such information or documentation, or both, as it deems necessary or appropriate.
- 2. For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.
- 3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification of incompleteness.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-01, 50-11-02, 50-11-03

#### **75-03-16-02.2. Provisional license.**

- 1. A provisional license must:
  - a. Prominently state that the facility has failed to comply with applicable standards and regulations of the department;

- b. State that the items of noncompliance are set forth on a document available upon request from the facility's operator or supervisor; and
  - c. Expire at a set date not to exceed one year from the date of issuance.
- 2. The department shall exchange a provisional license for an unrestricted license, which bears the exchange date, upon the facility's demonstration of compliance, satisfactory to the department, with all applicable standards and regulations.
- 3. A provisional license may be issued only to an applicant who has acknowledged, in writing, the factual and legal basis for the violation.
- 4. Any provisional license must be accompanied by a written statement of violation signed by the director of the division of children and family services, or the department's designee.
- 5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02.2

#### **75-03-16-02.3. Correction orders.**

- 1. The following time periods are allowed for correction of violations of North Dakota Century Code chapter 50-11 or this chapter:
  - a. For a violation that requires an inspection by a state fire marshal or local fire department authorized pursuant to section 75-03-16-40, five days;
  - b. For a violation that requires substantial remodeling, construction, or change to a building, sixty days; and
  - c. For all other violations, twenty days.
- 2. The department may require immediate correction of a violation that threatens the life or safety of a resident.
- 3. All time periods under this section commence on the third day after the department mails notice of the correction order to the facility.
- 4. Upon written request by the facility and upon showing need for an extension created by circumstances beyond the control of the facility

and that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-02.4. Fiscal sanctions.**

1. The department shall assess the following fiscal sanctions for each day that a facility remains out of compliance with a correction order after expiration of the time for correction of deficiencies:
  - a. For violations that endanger the health or safety of residents, a maximum of twenty-five dollars per day;
  - b. For violations of minimum staff requirements, a maximum of twenty-five dollars per day;
  - c. For violations of the prohibitions contained in section 75-03-16-26, a maximum of twenty-five dollars per day; and
  - d. For all other violations, a maximum of ten dollars per day.
2. The levy of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-02.5. Denial or revocation of license or endorsement.**

1. A facility license or an endorsement to operate an out-based program may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11-02, 50-11-07, and 50-11-08.
2. A facility whose application for license or an endorsement has been denied or revoked may submit a new application no sooner than one hundred eighty days after the date of denial or revocation. A facility is bound by the denial or revocation of a predecessor facility's application or endorsement, unless the facility shows substantial change in the facility's administration, statement of purpose, and program.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

### **75-03-16-03. Organization and administration.**

1. Each facility shall have a governing body that is responsible for the operation, policies, activities, and practice of the facility. For purposes of this chapter:
  - a. If the facility is owned by a corporation, the board of directors of the corporation is the governing body;
  - b. If the facility is owned by a partnership, the partners are the governing body;
  - c. If the facility is owned by a sole proprietor, the proprietor is the governing body; and
  - d. If the facility is owned by a limited liability company, the board of governors is the governing body.
2. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or any partner. The advisory committee shall meet at least once a year.
3. Each facility shall provide the department with the names and addresses of the members of the governing body and any advisory committee within thirty days after the member's selection.
4. The governing body shall:
  - a. Adopt a written statement of the purpose and philosophy of the facility.
  - b. Adopt written policies for the facility regarding personnel, nondiscrimination, admission and discharge, discipline, program services, and smoking.
  - c. Adopt written policies for the facility regarding the procedures to be followed in the event the facility closes. The policies must indicate that the governing body will:
    - (1) Provide the department with at least sixty days' written notice that the facility will be closing.
    - (2) Provide each child's custodian with at least thirty days' written notice that the facility will be closing.
    - (3) Provide for an appropriate North Dakota depository to maintain the facility's case, fiscal, and personnel records.

- (4) Provide for the retention of all fiscal records for a period of seven years following account settlement.
5. The facility shall submit copies of all required policies to the department with the application for license and shall maintain all required policies on file at the facility or other designated location within the state of North Dakota.
6. All statements and policies required by this chapter must be in writing.
7. Each facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees must be capable of performing assigned duties.
8. Each facility shall carry general comprehensive liability insurance.
9. Representatives of the facility shall meet on at least an annual basis with the appropriate personnel of the department to discuss the facility, its programs, and any other pertinent issues that concern the needs of the children cared for in the facility.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-04. Financial records and reports.**

1. If a facility is owned by a corporation, the certificate of incorporation must be on file at the facility or other designated location within the state of North Dakota.
2. The facility shall maintain complete financial records regarding the facility. The financial books must be audited annually by a certified or licensed public accountant. A copy of the accountant's most recent annual report must be submitted with the license application. The annual audit report must be kept on file at the facility or other designated location within the state of North Dakota.
3. A facility shall submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation. A new facility shall have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months. If a facility applies



for a change in licensed capacity, it shall submit a projected budget reflecting the changed capacity.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-05. Personnel records.**

1. The facility shall maintain an individual personnel file on each employee. The personnel file must include:
  - a. The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
  - b. Annual performance evaluations;
  - c. First-aid training record;
  - d. Cardiopulmonary resuscitation training record;
  - e. Annual staff development and training record;
  - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, and child abuse or neglect record;
  - g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
  - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
2. For purposes of subsection 1, "record" means documentation, including, with respect to development or training presentations, name of presenter, date of presentation, topic of presentation, and length of presentation.
3. The facility shall maintain an individual personnel file on each volunteer, student, or intern. The personnel file must include:
  - a. Personal identification information; and
  - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, and child abuse or neglect record.

4. The facility shall adopt a policy regarding the retention of personnel records.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-06. Facility administrator.** The governing body of the facility shall designate an administrator for the facility.

1. The responsibilities of the administrator must be clearly defined in writing by the governing body of the facility. If the facility is licensed for ten or more children, it shall employ a full-time administrator onsite or in close proximity. A facility may not employ an administrator less than half time.
2. The administrator shall have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
3. The administrator shall assure that the facility provides adequate supervision to all staff members who are working with residents.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-07. Program director.** The administrator shall hire or designate a program director for the facility.

1. The responsibilities of the program director must be clearly defined in writing by the administrator. The duties of the program director must be devoted to the provision of social services. If supervisory duties are assigned, the program director may only supervise personnel involved in treatment activities.
2. The program director must meet at least one of the following standards:
  - a. A licensed, certified social worker (MSW) with at least one year of clinical experience;
  - b. A doctor of philosophy or master of science degreed psychologist with at least one year of clinical experience;
  - c. A licensed addiction counselor who has a bachelor of arts degree in a social or behavioral science with at least three years of clinical experience;

- d. An individual possessing a master's degree in a clinical discipline, such as a behavioral science with a clinical focus, with at least two years of supervised clinical experience;
- e. An individual possessing a bachelor's degree in social work with at least three years' clinical experience in a licensed facility; or
- f. An individual otherwise qualified and serving as that facility's program director prior to August 1, 1998.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-08. Social service staff.** The facility shall hire or designate social service staff.

- 1. A facility shall have sufficient social service staff to meet minimum staff-to-child ratios required by this chapter.
- 2. The duties and responsibilities of the social service staff must be clearly defined in writing.
- 3. Social service staff responsible for the supervision of other employees, volunteers, or students on field placement or internship must be allowed sufficient time to perform supervision tasks.
- 4. Each social service staff person shall have, as a minimum, a bachelor's degree in social work or a related field and must be licensed as required by that field of practice.
- 5. Social service staff time must be devoted to the provision of social services.
- 6. If the facility holds itself out as furnishing or using a specific treatment method, the staff development and training records must document that the staff has had appropriate training in the specific training method.
- 7. Social service staff beginning employment in the facility will be on probation for a specified time to be determined by the facility.
- 8. Social service staff must have achieved the competencies necessary to implement any item of care or service which they are designated to perform in any child's individualized plan of care.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-09. Social service staff supervision.**

1. The program director shall provide and shall document the provision of a minimum of one hour of supervision per week for each staff member who is under the program director's supervision.
2. Each full-time social service staff supervisor may supervise no more than six social service staff holding positions as social service staff, treatment personnel, or child care supervisor. Social service staff supervisors may not supervise other positions.
3. The facility shall establish and implement a written plan for inservice training for the program director calculated to maintain and improve competence in the supervisory role and in social service practice.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-10. Child care staff.**

1. A facility shall have on duty at all times sufficient child care staff to meet the minimum staff-to-child ratios required by this chapter.
2. The duties and responsibilities of the child care staff must be clearly defined in writing.
3. All child care staff must be twenty-one years of age or older.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-11. Volunteers, student field placements, and internships.**

1. A facility which uses volunteers, student field placements, or interns who work directly with children on a regular basis shall:
  - a. Develop a description of duties and specified responsibilities for volunteer, student field placement, or internship positions to be provided to the volunteer, the student, and the student's school;
  - b. Designate appropriate staff members to supervise and evaluate volunteers, student field placements, or interns; and
  - c. Develop a plan for the orientation and training of volunteers, student field placements, or interns in the philosophy of the facility, the needs of the children in care, and the needs of their families.

2. Volunteers, student field placements, or interns may provide services in support of, but not in substitution for, paid staff members. Volunteers, student field placements, and interns may not be counted as staff for purposes of staff-to-child ratio requirements imposed by this chapter.
3. Volunteers, student field placements, and interns shall create records of incidents that occur during their presence at the facility to the same extent that employees are required to create such records.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-12. Personnel policies.** A facility shall have clearly written personnel policies. These policies must be made available to each employee and must include:

1. A staff training and development plan;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures for staff evaluation, disciplinary actions, and terminations;
4. A prohibition of sexual contact between staff and children;
5. Procedures for employee grievances;
6. Evaluation procedures which include a written evaluation following the probationary period for new staff and at least annually thereafter; and
7. A plan for review of the personnel policies and practices with staff participation at least once every three years, or more often as necessary.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-12.1. Criminal conviction - Effect on operation of facility or employment by facility.**

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code section

12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.

(1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.

(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.

3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if fifteen years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.

4. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

a. Common knowledge in the community;

- b. Acknowledged by the individual; or
  - c. Reported to the facility as the result of an employee background check.
- 5. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

**History:** Effective March 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-12.2. Employee background checks.**

- 1. A facility shall make an offer of employment to a prospective employee conditional upon the prospective employee's consent to and the results of background checks concerning:
  - a. Criminal conviction record; and
  - b. Child abuse or neglect record.
- 2. Where a position involves transporting children by motor vehicle the facility shall also make an offer of employment conditional upon the prospective employee's consent to and the results of a background report concerning the status of any motor vehicle operator's license issued to the prospective employee.
- 3. If a prospective employee has previously been employed by one or more facilities, the facility shall request a reference from all previous facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.
- 4. The department may perform a background check for reports of suspected child abuse or neglect each year on each facility employee.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-12.3. Staff health requirements.**

- 1. All personnel, including volunteers and interns, shall be physically and mentally capable of performing assigned tasks.

2. Except as specified in subsection 3, the good physical health of each employee shall be verified by a health screening, including a test for tuberculosis, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment. The individual performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to residents of the facility or other staff members.
3. Unless effective measures are taken to prevent transmission, an employee suffering from a serious communicable disease must be isolated from other employees and residents of the facility who have not been infected.
4. The facility shall collect and maintain information obtained under this section regarding the medical condition or history of any employee on forms and in medical files which are separate from any other forms and files and treated as a confidential medical record available to the employee, the facility, and the department.
5. The facility shall develop a policy regarding health requirements for volunteers, interns, and student placements which addresses tuberculin testing.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-13. Minimum staff requirements.**

1. For purposes of this section:
  - a. "Reside" means to sleep and keep personal effects; and
  - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. For purposes of this section, social service, program director, and administrator staff positions are expressed in full-time equivalents.
3. Every facility shall adopt a policy declaring the normal sleeping hours for the facility which shall not exceed eight hours per day.
4. Each facility shall comply with the following minimum staff-to-child ratio requirements for social service staff, program director, and administrator:



- a. One social service staff and a half-time administrator for a facility providing services for one to nine children; and
  - b. No less than one social service staff for each sixteen children, one program director, and one administrator for a facility providing services for ten or more children.
- 5. During waking hours each facility shall have:
  - a. One child care staff on duty during times when one to nine children are present in the facility; and
  - b. No less than one child care staff on duty for each eight children during times when ten or more children are present in the facility.
- 6. During sleeping hours each facility shall have no less than one child care staff on duty for each sixteen children who are present in the facility.
- 7. During sleeping hours each facility structure in which a child resides must meet staff-to-child ratio requirements for child care staff.
- 8. A facility which operates more than one structure in which children reside shall count the children in all structures collectively for purposes of determining the number of children for which the facility provides services, the need to employ a program director, and the required number of social service staff.
- 9. Educational staff may not be counted as child care staff, social service staff, administrator, or program director during any time the educational staff provides educational services.
- 10. Subsections 4, 5, 6, and 8 are effective January 1, 2000, with respect to any facility licensed as of the effective date of this subsection provided that facility maintains staff-to-child ratios no less than those in effect on the effective date of this subsection. This subsection is ineffective after December 31, 1999.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-14. Staff development.**

- 1. Each facility shall ensure that the administrator, program director, social service staff, child care workers, educational staff, and all other staff working directly with children shall receive at least twenty hours of training during each year of employment.

2. Training must prepare the staff to meet the needs of the children served and shall include the following subject areas:
  - a. Children's emotional needs and problems;
  - b. Reporting of child abuse and neglect;
  - c. Behavior management techniques, including crisis management and techniques of nonviolent crisis intervention; and
  - d. Emergency and safety procedures, including first aid and cardiopulmonary resuscitation.
3. Training in nonviolent crisis intervention, first aid, and cardiopulmonary resuscitation must be given by a certified instructor.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-15. Child abuse and neglect.**

1. All facility employees, volunteers, student placements, interns, and other nonemployees who have or may have regular contact with children shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written procedures requiring any employee to report cases of suspected child abuse or neglect. The procedures must include the following statement:

All employers will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that any employee who knows or reasonably suspects that a child in residence whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation shall immediately report this information to the regional human service center in the region in which the facility is located.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee to the office of the state's attorney for investigation of possible criminal violation.

3. The facility's procedure must describe:
  - a. To whom a report is made;

- b. When a report must be made;
  - c. The contents of the report;
  - d. The responsibility of each individual in the reporting chain;
  - e. The status of an employee who is an alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;
  - f. The discipline of an employee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and
  - g. The status and discipline of an employee who fails to report suspected child abuse or neglect.
4. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child residing at the facility. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation and permit confidential interviews with both staff and children.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-25.1-03

#### **75-03-16-16. Intake and discharge.**

- 1. A facility shall adopt written intake, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.
- 2. A facility shall have an intake committee and a discharge committee. The committees may have the same members.
  - a. The intake and discharge committees may include the program director, a social service representative, a child care staff representative, and such additional members as the facility determines appropriate.
  - b. The program director or a social service staff representative shall chair each committee.
- 3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.

4. Intake procedures.

- a. The intake committee shall screen applications and decide which children are admitted to the facility for care. These decisions must be made within thirty days of the receipt of sufficient information or a completed application.
- b. In order to determine if it is appropriate to admit a child, the facility shall have a policy requiring:
  - (1) The child's social and family history;
  - (2) The child's educational records including a copy of the school district notification, previous and current individual education plans, if any, and the name of the responsible school district;
  - (3) A psychiatric or psychological history, if indicated;
  - (4) A medical history, physical, and examination records;
  - (5) The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
  - (6) The name, address, and telephone number of the legal custodian or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardian; and
  - (7) The legal custodian's or guardian's authorization to obtain necessary medical treatment.
- c. A facility may admit a child without first securing all required information if:
  - (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the facility's intake committee has determined that admission is appropriate; or
  - (2) The child's circumstances require immediate placement and the facility's intake committee has preliminarily determined that admission is appropriate.
- d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.

- e. The facility shall request documentation of the services the parents or custodian will receive in the home community while the child is receiving services in the facility.
  - f. The facility shall request quarterly progress reports from the agency providing services to the parents or custodian.
  - g. In any direct placement by a parent or guardian, the individual making the placement is the referring agency.
  - h. If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.
5. Prior to discharging a child, the facility and the referring agency shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include:
- a. A progress report concerning the child;
  - b. The reason for discharge;
  - c. Future services recommended for the child and the child's family; and
  - d. The potential need for the child to return to the facility.
6. The facility shall adopt a policy addressing the circumstances under which a child may be discharged on an emergency basis. If a child is discharged on an emergency basis, the facility shall immediately inform the child's parent, guardian, or legal custodian.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-17. Case plan.**

1. Social service staff shall develop a written, individualized plan of care for each child within thirty days of admission to the facility. The case plan must demonstrate that the facility has made reasonable efforts to gather information from staff within the facility, parents, the referring agency, courts, schools, or any other appropriate individuals or agencies. The plan must be based on a thorough assessment of the situation and circumstances of the child and the family's needs, strengths, and weaknesses. If a plan was developed by another agency prior to admission, it must be reviewed to determine the relevancy to the current needs of the child and the child's family. The plan must delineate the individual or entity responsible for providing any item of care or service required. The plan of care must be reviewed

for appropriateness and effectiveness at least every thirty days by the responsible social service staff with changes and modifications made and documented in writing. The plan must state an estimated projected length of stay.

2. The written, individualized plan of care must include a description of the services that will be provided for the family in the family's home community, plans for visitation by the child's parents, legal custodian, or guardian to the facility or for the child's home visits, an indication of who will provide primary case management and service, and the child's signature or the signed statement of a member of the facility's social service staff that the plan of care was explained to the child and the child refused to sign the plan of care.
3. The written, individualized plan of care must include an indication of the services the child's family may receive from the facility or outside agencies.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-18. Interstate compact on the placement of children.**

1. All placements of children made from any state which is a member of the interstate compact on the placement of children or the interstate compact on juveniles must be made in compliance with the appropriate compact. It is the responsibility of the facility to ensure that, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact on juveniles have been completed.
2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles shall comply with all North Dakota laws and regulations prior to the arrival of a child into a facility.
3. Before admitting a child placed by any individual or entity that is not a court with jurisdiction in North Dakota, or an individual residing in North Dakota, a facility shall make arrangements with the placing authority sufficient to assure a lawful return of the child to the sending state without regard to the circumstance under which the child is discharged.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 14-13, 27-22

**75-03-16-19. Law enforcement notification.** A facility shall notify law enforcement officials immediately after it is confirmed that the resident child's

whereabouts are unknown. The facility shall notify the child's parents, guardian, or legal custodian within twelve hours after the child's whereabouts become unknown. When the child is found, the facility shall report the child's return immediately to the law enforcement officials and the child's parents, guardian, or legal custodian.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-01

**Law Implemented:** NDCC 50-11-02

**75-03-16-20. Programs and services.**

1. The facility shall adopt a written program plan which must:
  - a. Include a description of the facility's plan for the provision of services required in this chapter, as well as assessment and evaluation procedures to be used in program planning and delivery; and
  - b. Clearly state which services are provided directly by the facility and which services must be provided in cooperation with community resources such as public or private schools, and other appropriate agencies.
2. The facility shall provide information to referral sources, upon written request, which must include:
  - a. Identification of what the facility provides to the resident;
  - b. Characteristics of individuals appropriate for referral and admission to the facility;
  - c. The process by which the facility intends to achieve its goals;
  - d. Treatment orientation of the facility; and
  - e. Information required with the referral.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-21. Case file.** Within thirty days after placement, the facility shall establish and shall thereafter maintain a case file for each child receiving care in the facility. This file must include:

1. The child's full name, birthdate, and other identifying information;
2. A signed care agreement, contract, or current court order establishing the facility's authority to accept and care for the child;

3. An explanation of custody and legal responsibility for consent to any medical or surgical care;
4. An explanation of responsibility for payments for care and services;
5. An explanation of ongoing services;
6. Projected planning for discharge;
7. A permanency planning report or equivalent documents;
8. A copy of the appropriate interstate compact forms;
9. A copy of the written individualized plan of care;
10. Copies of periodic, but not less than quarterly, written reports to the child's parent, guardian, or legal custodian, developed by social service staff; and
11. Documentation that the program director, administrator, or utilization review committee has reviewed each case file every thirty days.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-22. Religious opportunities.** The facility will make a reasonable effort to make opportunities available for the children to attend religious ceremonies within the area in which the facility is located, giving appropriate consideration to any requests by the child and the child's parents. The facility shall respect the religious beliefs of the child and the child's family.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-23. Medical care.**

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care including first aid, dental care, and administration of prescription and nonprescription medicine.
2. A facility shall maintain first-aid supplies, including the red cross first-aid manual, in quantities and locations so that they are reasonably accessible at all times.
3. Any serious accident or illness requiring hospitalization or resulting in death must be reported to the parent, guardian, or legal custodian. Any death must be reported immediately to the department.



4. A record must be kept of prescription and nonprescription medication dispensed to each child, including the physician's medication order, the time, means, and frequency of administration, and the individual administering such medication.
5. All prescription medicines and drugs must be labeled and stored in locked compartments except those requiring refrigeration which must be properly stored.
6. Facility staff shall retain possession of nonprescription medications.
7. All pet inoculations must comply with local and state requirements.
8. Unless effective measures are taken to prevent transmission, any child suffering from a serious communicable disease must be isolated from other children who have not been infected.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-24. Food and nutrition.**

1. Food must be in wholesome condition, free from spoilage, filth, or contamination and shall be safe for human consumption. Food in damaged containers or with expired freshness dating is not considered safe for human consumption.
2. The facility shall ensure that the nutritional requirements of the children in care are met. The facility shall serve nutritionally balanced meals each day. Special diets must be prepared for those children medically requiring them.
3. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
4. No home-canned foods may be served.
5. Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the state department of health for food and beverage establishments.
6. Refrigeration for perishable food must be provided and maintained in accordance with standards prescribed by the state department of health for food and beverage establishments.

7. Personnel preparing food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-25. Children's needs.**

1. A facility shall arrange for children to have a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear and appropriate for the season.
2. Jobs and household responsibility for children must be assigned in a manner that does not conflict with the educational schedule or physical health of the children or preclude the children's opportunity for socialization activities.
3. Participation in recreational and social activities must be on the basis of the individualized needs and goals of each child.
4. The facility shall advise all children, in writing, of the day-to-day rules of the facility. The facility shall adopt day-to-day rules which create the least restrictive environment, consistent with the needs of children in care.
5. Each child must be provided a bed with a clean mattress and clean bedding. Blankets must be available to each child as temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly.
6. Each child must be provided personal hygiene and toilet articles, including washcloths and towels which must be changed when soiled, and no less often than weekly.
7. A facility shall ensure that privacy is assured when a family member visits a child. Any reason for restricting communications or visits between a child and the child's family members must be recorded in the child's case file.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-26. Discipline.** Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, discussion with the child about the situation, praise for appropriate behavior, and

gentle, physical restraint such as holding. A facility shall adopt and implement written policies for discipline and behavior management which include:

1. Only adult staff members of the facility may prescribe, administer, or supervise the discipline of children.
2. No child may be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or otherwise receive any inappropriate physical treatment.
3. Authority to discipline may not be delegated to or be accomplished by other children.
4. A child may not be locked in any room or other enclosure.
5. Physical restraint or isolation may be used only:
  - a. As a necessary complement to positive programming designed to strengthen desirable and adaptive behavior; and
  - b. To prevent immediate harm to the child or to another individual.
6. Isolation, when used as discipline, must be brief and appropriate. The child must be within hearing of an adult in a safe, lighted, well-ventilated room. A child who is isolated from peers for disciplinary reasons must be observed by the staff at least every fifteen minutes.
7. Verbal abuse or derogatory remarks about the child, the child's family, religion, or cultural background may not be used or permitted.
8. Neither physical restraints nor isolation may be used for punishment, for the convenience of staff, or as a substitute for programming. Except as permitted under section 75-03-16-26.2, mechanical forms of physical restraints may not be used.
9. Cruel and unusual punishments are prohibited, including the following:
  - a. Physically strenuous work or exercise, when used solely as a means of punishment; and
  - b. Forcing a child to maintain an uncomfortable position or to continuously repeat physical movements, when used solely as a means of punishment.
10. A child may not be deprived of any of the following as a means of discipline:
  - a. A place to sleep with a pillow and bedclothes;

- b. Meals;
- c. Clean clothes;
- d. Personal or telephone visits with parents, guardian, or legal representative;
- e. Time necessary for personal hygiene;
- f. Minimum exercise;
- g. Receipt and sending of mail;
- h. Access to toilet and water facilities, as needed;
- i. Voluntary attendance at a religious service or religious counseling;
- j. Clean and sanitary living conditions;
- k. Medication; and
- l. Sleep.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-26.1. Use of isolation or physical restraint.** Each use of isolation or physical restraint must be documented, filed in the child's case file within twenty-four hours, and entered in the central record maintained by the facility within seventy-two hours. Documentation must include:

1. The date and time of use;
2. The number of times isolation or restraint was used and the duration of each use;
3. A complete description of the type of isolation or restraint used;
4. The names of staff who applied the restraint;
5. A complete description of the injuries sustained by children or staff involved and the medical treatment provided; and

6. Documentation that information concerning the incident was communicated to the child's parent, guardian, legal custodian, or placing agency.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-26.2. Use of mechanical restraints - Limitations.**

Notwithstanding the provisions of section 75-03-16-26, a facility may use permissible mechanical restraints to contain the behavior of a child in transit from the facility if the child has clearly indicated the intent to inflict serious physical injury upon that child or others and the facility is unable to get assistance from law enforcement.

1. Permissible mechanical restraints consist solely of handcuffs and foot cuffs which may be used only when a child is transported from the facility by vehicle.
2. The term "mechanical restraint" does not include seatbelts, shoulder harnesses, or wheelchair locks used in vehicular transportation.
3. The facility shall provide the department with a list of staff members trained to use mechanical restraints prior to the institution of a transportation mechanical restraint program. Training for use of mechanical restraint devices must be documented in the staff development and training record.
4. Placing entities shall be informed that the facility may use mechanical restraints as a behavior containment measure in transporting a child from the facility.
5. A facility shall report each incident of any use of mechanical restraints to the regional supervisor within three days. The report must include the affidavit of the individual applying the mechanical restraint that sets forth:
  - a. A statement that the use of mechanical restraints was a last resort measure and all less restrictive measures failed;
  - b. The less restrictive restraint measures tried as alternatives to mechanical restraints;
  - c. The name of the law enforcement unit called, the time that law enforcement was called and was unable to respond, and the time that the child was transported; and
  - d. The name of the staff member applying the mechanical restraints and a statement that the staff member using the mechanical

restraints has been properly trained in the use of mechanical restraints.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-27. Confidentiality.**

1. For purposes of this section, "persons who have a definite interest in the well-being of children" include:
  - a. The parents and legal guardian or custodian, if any, of a child, except to the extent the parental rights have been removed or limited by court order;
  - b. The individual or entity that placed a child in the facility; and
  - c. An individual or entity identified in a child's written individualized plan of care as a provider of services, in the home community of the child's family, for the reunification of the child and the child's family.
2. Except as otherwise provided in this section, facility records concerning children that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
  - a. To staff of the facility, to the extent reasonably necessary for the performance of their duties;
  - b. To persons authorized by a parent, guardian, or custodian who may lawfully review a child's records, to review or receive copies of that child's records;
  - c. In a judicial proceeding;
  - d. To officers of the law or other legally constituted boards and agencies; or
  - e. To persons who have a definite interest in the well-being of the children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure the children's well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child or member of a child's immediate family, without first securing the written consent of the

child's parent, guardian, or legal custodian, or the written consent of an adult who was a resident of the facility as a child.

- a. Written consent must be informed, including full disclosure of how the image or information will be used, including any future use, and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes;
- b. The facility must inform the person signing that the individual is free to either grant or refuse to grant consent;
- c. The facility must provide a seven-day waiting period during which the consent can be withdrawn by the signing party; and
- d. The consent must be time-limited. Open-ended consents are not valid. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-06-15, 50-11-02, 50-11-05

**75-03-16-28. Education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The facility shall ensure that all children who receive care in the facility comply with all state school attendance laws.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-28.1. Water safety.**

1. For purposes of this section, "aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, or water slides.
2. The facility shall determine the swimming ability of each child prior to the child engaging in an aquatic activity.
3. The facility may not permit any child to participate in an aquatic activity requiring higher skills than the child's swimming classification, except during formal instruction.
4. The facility may not permit children to engage in an aquatic activity without adult supervision at all times.

5. The facility shall adopt and enforce a method to account for each child's whereabouts during aquatic activities, such as a buddy system.
6. The facility shall provide and maintain lifesaving equipment during all aquatic activities. The facility shall maintain all lifesaving equipment in good repair and shall maintain documentation of equipment maintenance. All equipment must be immediately accessible in case of an emergency. At a minimum, the following equipment must be furnished:
  - a. A whistle or other audible signal device;
  - b. A first-aid kit;
  - c. A ring buoy, rescue tube, lifejacket, or other appropriate flotation device with a rope attached which is of sufficient length for the area in which it may be used; and
  - d. A reaching pole.
7. The facility shall require that all activity participants wear personal flotation devices during all boating activities, including water skiing, tubing, and rafting.
8. Prior to any travel in any watercraft, the facility shall provide instruction in boarding, debarking, self-rescue in capsize or swamping situations, and the use of personal flotation devices.
9. Water activities are prohibited in waters the facility knows or should know in the exercise of reasonable care to contain health-threatening levels of pollutants.
10. The requirements of this section apply to activities wherever the activities take place. Where activities take place off of the facility premises, the facility need not provide facility-owned lifesaving equipment, if equipment which meets the requirements of this section is provided by another entity.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-29. Buildings, grounds, and equipment.**

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.



2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection on file at the facility or other designated location, and a copy sent to the licensing authority.
3. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
4. There shall be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and identifying the individual who performed the service.
5. The facility shall provide the following smoke detectors:
  - a. One unit for each bedroom hallway;
  - b. One unit at the top of each interior stairway; and
  - c. One unit for each room with a furnace or other heat source.
6. Battery-operated smoke detectors must signal when the battery is exhausted or missing, and be tested at least once a month.
7. A facility shall have written plans and procedures for meeting disasters and emergencies.
  - a. Staff members must know all plans and procedures for meeting disasters and emergencies.
  - b. The facility shall advise each child in the facility of all emergency and evacuation procedures upon admission to the facility. These procedures shall be reviewed with the children every two months, including performance of fire evacuation drills.
  - c. The facility shall have telephones centrally located and readily available for staff use in each living unit of the facility. Emergency

numbers including the fire department, police, hospital, physician, and ambulance must be written and posted by each telephone. There must be telephone service in all buildings housing children.

- d. There must be at least two independent exits from every floor. The exits must be located so that children can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area.
  - e. Flashlights must be available to all staff for emergency purposes.
8. Any vehicle used by a facility for the transportation of children or staff must be licensed in accordance with the laws of North Dakota and must be maintained and periodically inspected to ensure its safe operating condition.
- a. Vehicles used to transport children must be covered by liability insurance.
  - b. The number of persons in a vehicle used to transport children may not exceed the number of available seats. All individuals shall wear seatbelts in vehicles that are equipped with seatbelts.
  - c. Any operator of any vehicle shall hold a valid driver's license of the appropriate class from the operator's jurisdiction of residence.
9. All buildings must be equipped with furnishings suitable to needs of the children. Recreational space and equipment must be safe, functional, and available for all children in the facility.
10. The facility shall have one centrally located living room for the informal use of children.
11. The facility shall have a dining room area large enough to accommodate the number of individuals who normally are served.
12. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
13. A facility shall have bedroom accommodations for the children.
- a. The facility shall have at least one bedroom for each four children.
  - b. The facility may not permit nonambulatory children to sleep above or below the ground floor.

- c. There must be no more than one child per bed. Triple bunks may not be used.
  - d. No child six years of age or older may share a bedroom with a child of the opposite sex.
  - e. All bedrooms must have at least one window which opens to the outside.
  - f. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes.
  - g. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms.
  - h. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the children in care.
  - i. A facility shall have sufficient storage to accommodate each child's clothing and other personal belongings.
14. A facility shall have one complete bathroom for each six residents. A complete bathroom includes toilet, washbasin, and a tub or shower.
- a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean.
  - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment.
  - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
15. Facilities shall ensure that kitchen equipment and area meet the standards prescribed by the state department of health for food and beverage establishments. Compliance with these standards must be documented annually and the documentation kept on file at the facility or other designated location within the state of North Dakota.
- a. Food storage space must be clean and containers must be covered and stored off the floor.
  - b. Dishes, cups, and drinking glasses used by the children must be free of chips, cracks, and other defects, and must be sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher.

- c. Kitchen floors must be reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.
- 16. Laundry facilities must be located in an area separate from areas occupied by children. Space for sorting, drying, and ironing must be made available to children who are capable of handling personal laundry.
- 17. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, the facility shall obtain approval for the water supply from the state department of health. Each water outlet accessible to children must be supplied with safe and potable water.
- 18. All agricultural chemicals, pesticides, and other poisons must be stored in a locked cabinet.
- 19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
- 20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
- 21. All rooms in a facility must have adequate lights, heat, and ventilation. All baths and toilet rooms must have a window which opens to the outside or exhaust ventilation.
- 22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
  - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards.
  - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of the children.
  - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight.
  - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails.
  - e. Buildings must be free of unabated asbestos.

- f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
23. A facility must immediately notify the responsible placing agency and the department of a fire or other disaster which endangers or requires the removal of children for reasons of health and safety.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-30. Variance.** Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance from the provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any child cared for by the facility and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to appeal.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-31. [Reserved]**

**75-03-16-32. [Reserved]**

**75-03-16-33. [Reserved]**

**75-03-16-34. [Reserved]**

**75-03-16-35. [Reserved]**

**75-03-16-36. [Reserved]**

**75-03-16-37. [Reserved]**

**75-03-16-38. [Reserved]**

**75-03-16-39. [Reserved]**

**75-03-16-40. [Reserved]**

**75-03-16-41. Other rules applicable to out-based programs.**

1. All provisions of this chapter apply to out-based programs unless expressly specified to the contrary or unless specifically superseded by sections applicable only to out-based programs.

2. Sections 75-03-16-41 through 75-03-16-70 apply only to facilities which operate an out-based program.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-42. Participation by foster children in out-based programs - Time limits.**

1. A facility may not permit children in foster care to participate in any out-based program other than one operated by a facility that holds a valid endorsement issued pursuant to this chapter.
2. A participant may not spend more than forty-five consecutive days in an out-based program expedition. A participant may not spend more than sixty total days in an out-based program in any calendar year.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-43. Eligibility for endorsement to operate out-based program - Effect of endorsement.**

1. An application for an endorsement to operate an out-based program may be made only by a group home or residential child care facility currently licensed under this chapter, and which has been licensed and has actually had children in care for at least one year prior to the date the application for endorsement is received by the department.
2. An endorsement to operate an out-based program may be issued only if:
  - a. The facility declares in its written statement of purpose and philosophy that the out-based program is an integral component of the facility's total program; and
  - b. The facility operates the program without subcontracting or otherwise using another entity to supply staff services, physical facilities, or equipment.
3. An applicant shall submit an application on the forms and in the manner prescribed by the department.
4. The department shall issue an endorsement to operate an out-based program upon a finding that an applicant has complied with the provisions of this chapter. The endorsement must be made in writing in a manner prescribed by the department.

5. An endorsement to operate an out-based program is in force and effect for a period of one year, or until the expiration of the facility's license to operate a group home or residential child care facility, whichever is shorter. If the facility's license to operate a group home or residential child care facility is revoked, the endorsement is also revoked as of the date and time of the license revocation.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-44. Contents of application for endorsement.** A facility that seeks to operate an out-based program shall submit to the department a proposed program description consisting of the following information, with supporting documentation as indicated:

1. Specifically identified program objectives and activities;
2. Criteria and procedures for admission of participants to the program;
3. A description of the number and types of individuals to be served, including age, sex, and significant emotional or behavior characteristics;
4. Criteria for assigning participants to a program or grouping them within a program, including age, sex, or other characteristics;
5. The number and qualifications of staff responsible for providing program services, including identification of the person responsible for administering the program;
6. The degree and method of family involvement in the program;
7. Other professional services available to participants, such as psychological or psychiatric services, if any;
8. The extent to which services stated to be available are in fact available, including number of staff available to provide the service and time the service is available;
9. Statement of policies regarding supervision of participants and behavior management policies and techniques;
10. Emergency and safety procedures; and
11. A description of staff training to be provided as required by this chapter, including subject matter and time devoted to staff training.

The department may require other information or documentation as it deems necessary or appropriate.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-45. Effect of single serious violation.** Due to the difficulty of monitoring out-based programs and the inherent dangers of the wilderness, a single violation of health or safety standards, as established by this chapter, which creates a serious threat to human life or well-being, may result in any of the following:

1. Immediate revocation of the facility's out-based program endorsement;
2. Immediate revocation of the facility's license to provide foster care;
3. Removal of participants; or
4. Removal of children in foster care.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-46. Out-based program activities.**

1. Activities must be led by staff who have demonstrated proficiency in the skills required for the activity, as determined by the facility's governing body and expressed in written policy and procedure.
2. Activities must be conducted in such a manner as to minimize any adverse effect on the environment.
3. Activities requiring or involving firearms are prohibited. No individual may possess a firearm during any out-based program activity.
4. Airborne activities, including bungee jumping, hang gliding, and parachuting are prohibited.
5. A facility may not allow children or staff to participate in any test of new products by a manufacturer or other entity.
6. Activities must be graduated in the level of difficulty and matched to the level of skills or capabilities of the participants. The facility shall ensure that techniques and skills are taught progressively.
7. An activity's pace must be set according to the capabilities of the least able or fit member of the group, take into account previous illness or injury, and be designed to prevent the occurrence of accidents or illness.



8. A facility may not conduct any out-based program activity which has not been disclosed to the department in the facility's application for an endorsement.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-47. Voluntary participation.**

1. A facility may not physically force any child to participate in an out-based program, but may require a child to attend an orientation by means of lecture, video, or other description of the program designed to assist the child in overcoming fear or to foster an interest in participation.
2. A facility shall provide safe escort back to the facility for any participant who leaves a program at a location away from the facility. The facility may provide safe escort elsewhere, as appropriate, to meet the personal treatment needs of the participant.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-48. Administration and organization for out-based programs.**

1. The facility shall maintain a current organization chart showing the administrative structure, including the lines of authority. The facility shall provide the chart to the department upon request.
2. Any substantial change of program purpose, philosophy, or policies regarding personnel, admission, or program services may be made only upon thirty days' advance notice to the department and upon departmental approval.
3. The facility shall notify the department within ten days of any change in the identity of the out-based program field director.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-49. Out-based program admission - Policies on discharge.**

1. Eligibility to participate in a facility's out-based program is limited to children who are residents in the facility and who belong to the population for whom the facility is licensed to provide foster care. Activities for children under age thirteen must be adapted to be age appropriate.

2. Notwithstanding any admission criteria established by a facility, participants in an out-based program shall have a physical exam within one hundred twenty days prior to commencement of the program. Documentation of the exam shall be made on a form provided by the facility, signed by a licensed medical professional, and submitted to the facility prior to commencement of participation. The physical exam form must clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.
3. Potential participants who have a history of chronic psychological disorders shall undergo a psychological evaluation by a licensed clinical psychologist within ninety days prior to the commencement of a program. Documentation of the evaluation must be made on a form provided by the facility, signed by the evaluator, and submitted to the facility prior to commencement of participation. The evaluation form shall clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.
4. The facility shall adopt written policies describing the circumstances under which a participant may withdraw or may be discharged from a program prior to the termination of the program.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-50. Out-based program orientation.**

1. Prior to the start of out-based program activities, the facility shall describe to the participant the nature of the program's activities. The facility shall explain the anticipated benefits of the program, describe in an age-appropriate manner the potential risks of activities undertaken in the program, and explain precautions taken to minimize risks. The facility shall document the date and content of orientation in the participant's record. The facility shall make reasonable efforts to describe the nature of program activities to the participant's parent or legal custodian.
2. The facility shall provide to each participant and the participant's parent or legal custodian a written statement of policies governing the care of participants, including rules governing conduct in the field and other discipline policies. The statement must clearly enumerate maximum consequences for violation of the rules. The participant shall sign an acknowledgment that the participant has received the written statement and been informed of its content. If the participant refuses to sign, a

representative of the facility may sign the statement, in which case the participant's refusal to sign must be noted on the statement.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-51. Case plan.** For each participant in an out-based program, the facility shall maintain in the participant's case plan documentation of:

1. Any restrictions placed on the participant's communication with family or others during the program, including mail;
2. A plan for staff reporting on the participant's status to the parent or legal custodian;
3. The intended likely benefits to the individual participant, based on the individual's needs;
4. The means by which the program will promote transference of learning by the individual participant to life after the program; and
5. A copy of the court order which establishes the authority of the legal custodian, in cases where such an order has been entered.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-52. Records of participation in out-based program.**

1. A facility shall establish and maintain a record of each child who participates in an out-based program. The record must include the:
  - a. Participant's acknowledgment that the participant was given a written statement of program policies, including discipline;
  - b. Licensed health professional's report on physical exam for admission to program;
  - c. Report on psychological evaluation, if any;
  - d. Documentation by staff that participant and parent or custodian were given orientation as to the anticipated benefits, risks, and precautions of program activities;
  - e. Dates of participation in program; and

- f. A copy of any documentation made as a result of any incident for which this chapter requires a written report or documentation of an oral report.
2. The records shall be maintained for a minimum of six years after the child's participation in the program.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-53. Mail to and from participants in out-based programs.**

1. Incoming mail must be delivered in as prompt a manner as location and circumstances allow.
2. Unless contraindicated for treatment purposes, a facility may not withhold, read, censor, or otherwise restrict incoming mail from parents, custodians, or legal representatives of a participant. A facility may restrict other incoming mail only upon written instruction of the participant's parent or legal custodian, except in case of emergency.
3. A facility may require that all incoming mail be opened in the presence of staff. Participants are entitled to be present when incoming mail is opened. The facility may not allow participants to take possession of illegal or otherwise prohibited items.
4. A facility may not read, censor, or otherwise restrict outgoing mail to a participant's parent, legal guardian, or legal representative. A facility may restrict other outgoing mail only upon written instruction by the participant's parent or legal custodian.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-54. Discipline and behavior management for out-based programs.**

1. The provisions of this section apply to out-based programs in addition to any other provisions of this chapter regarding discipline or behavior management.
2. The facility shall adopt written policies for discipline and behavior management, including definitions of inappropriate behaviors of participants and acceptable staff responses to inappropriate behaviors.

3. The facility shall give all program staff training in behavior management, including review of facility policies, annually or more often as appropriate.
4. No staff member may use or permit the use of any method to control the behavior of participants which a reasonable person would find humiliating, frightening, demeaning, or punitive. Staff may not require extreme physical activities by participants as a method to control behavior. Staff may not deny participants food, clothing, shelter, rest, medical care, prescribed therapeutic activities, or contacts with family or legal representatives as a means to control behavior.
5. Staff may require participants to engage in activities necessary to the health and safety of the group. A participant may bring a grievance based on required participation after the program is completed.
6. If a participant refuses food, clothing, shelter, rest, medical care, prescribed therapeutic activities, contacts with family or legal representatives, or other services, staff shall document the refusal in the daily log and in additional places as the facility deems appropriate.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-55. Health and medical care - Consent to medical care.**

1. A facility operating an out-based program shall adopt a comprehensive written plan of preventive, routine, emergency, and followup health and medical care for all participants. The plan must include policies and procedures designed to prevent infectious and communicable diseases and to address acclimatization of participants and staff.
2. All participants shall have access at all times to a staff member trained to administer first aid and cardiopulmonary resuscitation.
3. Staff shall provide first-aid treatment, including first aid for injury, allergic reactions, disease, and venomous bites.
4. The facility shall provide first-aid kits during all field activities. Kits must include sufficient supplies appropriate for the activity, location, and environment in which they may be used.
5. The facility shall secure medical treatment by qualified medical personnel as needed for all participants, staff, and volunteers as promptly as circumstances allow.

6. Mobile program expedition groups shall bring executed medical treatment consent forms for all staff and participants on the expedition.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-56. Out-based program staff - Participant ratio.**

1. In a program with both male and female participant, there shall be at least one female staff member and one male staff member notwithstanding any other requirements for staff-to-participant ratios set forth in this chapter.
2. The facility shall provide sufficient staff to meet participant needs under the prevailing conditions of program activities. In any event, all programs shall have at least two staff members on duty at all times. There shall be at least one staff member for every five participants.
3. An expedition group may not exceed fifteen people, including staff, participants, interns, and volunteers.
4. The facility shall identify all skills required by the program's activities and shall identify the staff member who has demonstrated proficiency in that skill. Staff who accompany participants in the field must include at least one staff member who has demonstrated proficiency in each skill required for the program's activities.
5. All staff accompanying participants in the field shall have training as required by this chapter and be at least twenty-one years of age.
6. The facility shall maintain documentation of any demonstration of proficiency required by this section in its personnel files.
7. A facility which operates an out-based program of more than fourteen consecutive days' duration shall provide the opportunity for participant contact with social service staff a minimum of once every fourteen days. Additional opportunities for contact must be provided on the basis of individual need.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-57. Staff, interns, and volunteers for out-based programs.**

1. Each program shall designate a staff member as "field director" who coordinates field operations and supervises field staff. The field director shall be at least twenty-five years of age and shall have a

minimum of thirty semester or forty-five quarter hours education in recreational therapy or related field, or one year of out-based program field experience.

2. A program may have interns who are individuals learning program practices while completing education requirements. Interns must be supervised by program staff.
3. A program may have volunteers. Volunteers must be directly supervised by program staff at all times.
4. Staff shall meet all applicable local, state, and federal regulations and professional licensing requirements.
5. All field staff, interns, and volunteers shall have an annual physical examination by a qualified licensed medical professional. The facility shall maintain documentation of the physical examination in its personnel files.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-58. Staff training for out-based programs.**

1. The facility shall provide initial staff training consisting of an academic curriculum and practicum or field training.
2. The initial staff training and field course training shall be provided by qualified individuals and shall include instruction in the following topics:
  - a. Water, food, and shelter procurement, preparation, and conservation;
  - b. Low impact wilderness expedition and environmental conservation skills and procedures;
  - c. Instruction in safety procedures and safe equipment use;
  - d. Instruction in emergency procedures;
  - e. Sanitation procedures;
  - f. Specialty instruction as required;
  - g. Navigation skills, including map and compass use, contour, and celestial navigation;
  - h. Counseling, teaching, and supervising participants;

- i. Report writing, including development and maintenance of logs and journals;
  - j. Federal, state, and local regulations as applicable to the program activity, such as department of human services, bureau of land management, United States forest service, national parks service, North Dakota state game and fish department regulations; and
  - k. All written policies a facility is required to adopt under this chapter.
- 3. All out-based program staff must be recertified annually in cardiopulmonary resuscitation and standard first aid.
  - 4. The facility shall maintain documentation of all staff training in its personnel files.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-59. Operation of out-based programs outside North Dakota.**

- 1. All mobile program expeditions must originate and terminate in North Dakota. All orientation, emergency instruction, and other activities required under this chapter to take place prior to the program must occur in North Dakota. A facility may not permit participants to join an expedition without receiving orientation, emergency, and other preprogram instruction in North Dakota as required under this chapter. A facility may not permit participants to join an expedition after the expedition leaves North Dakota. A facility may not discharge or otherwise separate participants from a program expedition outside North Dakota except in case of emergency, or as provided by the participant's case plan.
- 2. Out-based programs may not take participants outside the territory of the United States without prior written authorization by the legal custodian.
- 3. Out-based programs shall follow the standards established by this chapter wherever program activities take place. The facility is responsible for meeting any additional standards imposed by a jurisdiction in which an activity takes place.
- 4. A facility shall communicate, to the extent required by law, with regulatory agencies in jurisdictions, including county, state and federal, other than North Dakota in which program activities take place.



5. A facility may not take participants outside North Dakota for more than thirty consecutive days.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-60. Daily schedule and log.**

1. The facility shall approve and maintain a written description of program activities, including a daily schedule.
2. Field staff shall maintain a common, signed, daily log in a bound volume with preprinted page numbers and lined pages. The log must contain information on accidents, injuries, medications, behavioral problems, and all unusual occurrences. All log entries must be recorded in permanent ink with no lines skipped. The facility shall keep the log as a permanent record.
3. For mobile programs, staff shall record in the log travel times and miles traveled in addition to other information required by this chapter.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-61. Emergency and safety procedures - Communications.**

1. The facility shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather, loss of water or food supplies, intruders, and lost participants or staff. The plan must include:
  - a. Designation of authority and staff assignments;
  - b. Plan for evacuation, including transportation and relocation of participants when necessary and evacuation of injured persons; and
  - c. Supervision of participants after evacuation or relocation.
2. All out-based programs shall provide firefighting equipment appropriate to the location and nature of program activities and shall maintain all such equipment in good repair. At a minimum, such equipment must include a shovel and water receptacle.
3. The facility shall give all program participants training in fire prevention, fire safety, and precautions in case of severe weather. The facility shall give safety training in additional areas as may be applicable to

program activities including dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants or animals, snow blindness, and drowning.

4. Any mobile program expedition group shall maintain the capability of contacting the facility at all times by means of a system that includes, at a minimum, reliable two-way radio or telephone communication devices plus a backup means of contact in the event of radio or telephone failure. An expedition group may substitute the capability of contacting a sheriff's office or other emergency response entity only upon prior approval by the department.
5. A mobile program expedition group shall contact the facility by radio, telephone, or other verbal means at least once every forty-eight hours.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-62. Transportation for out-based programs.**

1. The facility shall adopt written policies for the transportation of participants in an out-based program.
2. Any vehicle used to transport out-based program participants or staff must be equipped with flares, flashlight, jack, spare tire, and fire extinguisher. Any vessel used for water transport of out-based program participants must be equipped with flares, flashlights, fire extinguishers, and personal flotation devices for all passengers.
3. When transporting one or more program participants, two staff members shall be present at all times, at least one of whom shall be of the same sex as the participant, except in case of emergency.
4. All passengers shall wear seatbelts in vehicles so equipped at all times while the vehicle is moving.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-63. Mobile program travel plan - Predeparture procedures.**

1. Prior to the departure of a mobile program expedition group, the facility shall develop a travel plan which includes an itinerary and a preestablished check-in time. The facility shall keep a copy of the travel plan at the facility.

2. For mobile programs, the facility shall file a copy of the program's itinerary with the sheriff of every county in which program activities take place.
3. The facility shall initiate its preestablished emergency and safety plan as provided for in section 75-03-16-61 upon the failure of a traveling group to check in on time.
4. The travel plan must:
  - a. Include a map of all activity areas;
  - b. Identify appropriate sources or locations of water, food, laundry facilities, bathing, and liquid and solid waste and garbage disposal;
  - c. Provide daily periodic rest stops and opportunities for relaxation, exercise, and personal time;
  - d. Provide that vehicle travel not exceed five consecutive days of eight or more hours without a minimum of one intervening nontravel day, except in case of emergency travel; and
  - e. Specify routes to be traveled, including daily mileage, dates and times of departure and arrival, location of overnight stops, and planned activities.
5. Prior to departure, all participants and staff shall receive instruction in the proper and safe use of vehicles and equipment, in safety and emergency procedures, and in transportation to emergency facilities.
6. When a program's itinerary includes use of land regulated by a public agency, the facility shall comply with all regulations of the public agency, including the obtaining of permits.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-64. Out-based program participants' clothing and personal needs.**

1. Participants shall have their own clothing, which shall meet the participant's needs and be of proper size.
2. Clothing shall be suited to the existing climate and seasonal conditions. Participants shall have regular clean clothing changes at least twice weekly.

3. Each participant shall be provided adequate protective equipment to afford reasonable insulation from insects, effects of weather, and irritating plant life. Equipment must include, as conditions require, rain gear, footwear, insect repellent, and sun screen. Staff shall ensure appropriate usage of protective equipment by participants.
4. Participants shall be allowed reasonable personal grooming items and supplies, including feminine hygiene supplies, which the participant may keep in the participant's personal possession.
5. Each participant shall have time during each day for the purpose of rest and reflection.
6. If program activities cause a participant to be absent from regular schooling more than fourteen days in a school year, the facility shall provide the means to continue the participant's individual education plan during the program.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-65. Out-based program toilet facilities - Bathing.**

1. When program activities are conducted away from a permanent site, the facility shall provide instruction in sanitary practices that respect individual privacy as well as health and environmental concerns.
2. The following requirements apply to permanent program sites:
  - a. The program shall provide outdoor toilet facilities that allow for individual privacy. Toilet facilities shall be constructed, located, and maintained in compliance with any existing codes or health regulations, and in any event so as to prevent any nuisance, noxious odors, or public health hazard.
  - b. Toilets, outhouses, and portable toilets must be cleaned and disinfected at least daily. Portable toilets must be emptied daily in an approved dump station.
  - c. Handwashing facilities must be located adjacent to the toilet area and must be separate and apart from sinks and areas used for food preparation and dishwashing. Soap and handdrying devices must be made available.

- d. The facility shall provide at least one warm shower or warm water for full body sponge bath to each participant no less than every other day.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-66. Water and nutritional requirements for out-based programs.**

1. The facility shall make available a minimum of six quarts [5.68 liters] of potable water per day per person for drinking, personal hygiene, and cooking, plus one additional quart for each five miles [8.05 kilometers] hiked.
2. The facility shall make available to all participants a means for electrolyte replacement.
3. All water from natural sources shall be treated for sanitation to eliminate health hazards.
4. The facility shall maintain a written menu describing food supplied to the participants to ensure that the nutritional requirements of each participant are met by means of balanced meals. The menu must adjust to meet increased dietary needs as exercise or weather conditions dictate.
5. A facility may use foraging as a program activity if the facility provides nonforaged food in compliance with nutritional requirements stated in this chapter. Forage items may not be included in determining whether nutritional requirements are being met. A facility may not use fasting as a program activity.
6. Food storage practices must meet standards established by state or local health authorities.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-67. Program and campsites - Permits - Sleeping shelters and equipment.**

1. The facility shall conduct out-based programs on sites appropriate to the participants' health, safety, case plans, and program goals.
2. Campsites must be located on land that is drained sufficiently for participant health and safety. Campsites may not be located in a

riverbed or desert washes, or other areas where flash flooding may occur.

3. Any tent or other shelter used for sleeping and living purposes, which remains in one location for more than two weeks, must have a floor that is smooth, in clean condition, and in good repair.
4. All tents, tepees, or other sleeping shelters made of cloth must be fire retardant, of the fiber-impregnated flame retardant variety. A facility may not use plastic sleeping enclosures of any type.
5. Sleeping shelters must be easily cleanable and in good repair, must be put up and maintained in safe condition, and must afford adequate protection against inclement weather.
6. Tents or other temporary shelters must provide sleeping space of not less than fifteen square feet [1.39 square meters] per person.
7. A facility may not permit campfires or open flames of any type in or within forty feet [12.19 meters] of any sleeping shelter. Tent heaters may be used only if they are of a type intended for use in tents and are adequately vented.
8. The facility may not permit smoking within any sleeping shelter.
9. Sleeping shelters must have an unobstructed exit at all times.
10. Sleeping equipment must be clean, nontoxic, and fire retardant.
11. Sleeping equipment must provide reasonable insulation from cold and dampness. The facility shall provide insulation from the ground such as a waterproof ground cloth or air or foam mattress in addition to sleeping bag or blankets.
12. All sleeping equipment must be laundered, drycleaned, or otherwise sanitized between assignment to different participants or staff. All sleeping equipment must be aired at least once every two days and laundered, drycleaned, or sanitized at least once every thirty days of use. Cleaning of sleep equipment must not affect the equipment's fire retardant features.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-68. Sanitation for out-based programs.**

1. When program activities are conducted away from a permanent site, the facility shall provide for solid and liquid waste disposal in a manner which promotes health and minimizes impact on the environment.
2. Personal hygiene supplies must be made of biodegradable materials.
3. At permanent sites, garbage and rubbish must be stored securely in durable, noncombustible, leakproof, nonabsorbent containers covered with tight-fitting lids. Containers must be lined with a waterproof liner or thoroughly cleaned after each emptying. Garbage and rubbish storage must be away from living and sleeping areas. Solid wastes must be disposed of regularly in an approved sanitary landfill or similar disposal facility.
4. The facility shall provide for the timely control of insects and rodents in a safe manner which avoids harmful effects to human beings and to the environment.
5. If any temporary shelter for animals, corral, tie-rail, or hitching post is used, it must be located more than fifty feet [15.24 meters] from any area where food is prepared, cooked, or served. Preventive measures such as insect repellent and daily removal of manure must be used to prevent such a location from becoming an attraction for or breeding place for flies or other insects.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-69. Hiking and backpacking.**

1. Hiking shall not exceed the physical capability of the weakest member of the group. Hiking is prohibited when conditions pose a threat to the health of the participants. Staff shall monitor hikers at frequent regular intervals when the outdoor temperature is ninety-five degrees Fahrenheit [35 degrees Celsius] or higher, or is minus ten degrees Fahrenheit [-23.33 degrees Celsius] or lower, and shall adjust activities accordingly to ensure each participant's health and safety.
2. The facility shall furnish a frame backpack to participants when the weight to be carried by any participant exceeds twenty percent of the participant's body weight. The facility may not require participants to

carry a load that is excessive given the participant's experience and the terrain, duration, and environmental conditions of the trip.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-70. Solo activities.**

1. Solo activities may not exceed seventy-two consecutive hours' duration, exclusive of preparation time.
2. Only individuals in good physical and mental condition and who are able to care for themselves without assistance, which has been determined prior to the individual's departure from the facility as provided for in subsections 2 and 3 of section 75-03-16-49, may participate in solo activities.
3. Prior to any solo activity, the facility shall instruct participants in safety and emergency procedures and in the boundaries of the solo activity location.
4. The facility shall furnish each solo activity participant with the following equipment and supplies: whistle, shelter, water, and food as required by this chapter; and at least one change of clothing appropriate to weather conditions.
5. Solo activities are prohibited in areas containing moving water with a strong current.
6. Staff shall observe a solo activity participant at least every two hours during the solo activity. Staff shall adjust the duration of proximity of supervision to the participant's needs, the terrain, and environmental conditions. Staff must be available for sight or sound contact by the participant at all times.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03